

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION NO 190 of 2017

Monday, this the 09th day of July 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Army No. 6447174, Ram Abhilakh Singh, Ex Rect, Son of Late Gauri Shankar Singh, R/O-Village and Post-Bhawani Nagar, District-Amethi (Earlier Raebareilly).

....Applicant

Ld. Counsel for the: **Shri Surya Prakash Singh, Advocate.**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief Controller of Defence Accounts (Pension), Allahabad, U.P.
3. In-Charge Officer, ASC Records (AT), Meerut Cantt, Meerut, U.P.
4. Commanding Officer, ASC Records (AT), PIN-900493, C/O 56 APO.

....Respondents

Ld. Counsel for the :**Shri Ashish Kumar Singh, Advocate.**
Respondents.

ORDER**“(Per Hon’ble Air Marshal BBP Sinha, Member (A))”**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of the following relief:

“(a) to quash the impugned order dated 23.05.2016 passed by opposite party No. 4 as contained in Annexure No A-1 to this application.

(b) to direct the opposite parties to provide the disability pension to the applicant along with arrears @ 18% interest in the light of judgment and order dated 05.02.2016 passed by this Hon’ble Tribunal in Talak Mahmood case, since the date of discharge, i.e. 24.04.1963.

(c) to direct the opposite parties to re-constitute medical board for examination of the applicant.

(d) issue such other order which may be deemed just and proper in the circumstances of the case.”

2. We have heard Shri Surya Prakash Singh, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents and perused the records.

3. Brief facts of the case are that the applicant was enrolled in the Army on 10.10.1961 and invalided out from service w.e.f. 24.04.1963 (FN) under Rule 13 (3) III (iii) of the Army Rules, 1954 in low medical category “EEE” due to diagnosis

'Thrombophlebitis (left) Leg (463)'. The duly constituted Invaliding Medical Board, prior to discharge, assessed his disability @ 20% but considered neither attributable to nor aggravated (NANA) by military service for the reason that the applicant was suffering from **'Thrombophlebitis'** which is constitutional in nature. Disability pension claim preferred by the applicant was rejected by the competent authority vide order dated 28.06.1963. Subsequent representations were also rejected by the competent authority on the ground that the disability is neither attributable to nor aggravated by military service.

4. Ld. Counsel for the applicant has relied upon the case of ***Talak Mahmood***, O.A. No 121 of 2012 but the applicant's case is dissimilar to the above case as the applicant was invalidated out based on the findings of the Invaliding Medical Board wherein it has been considered that the disability sustained by the applicant is neither attributable to nor aggravated by military service.

5. Ld. Counsel for the respondents has opposed admissibility of the above O.A. on the plea that since the applicant's disability is neither attributable to nor aggravated by military service, hence the claim for disability pension has rightly been rejected.

6. It is submitted that the applicant having been enrolled on 10.10.1961 was admitted in Military hospital, Meerut on 27.12.1961 i.e. within two months' of enrolment, there he was downgraded to medical category 'CEE' for six months by a Medical Board held at Military Hospital, Meerut on 09.08.1962. The Invaliding Medical Board while discharging the applicant opined that the disability will not interfere with performance of normal sedentary or suitable civil employment.

7. In Medical Journal, the term 'Thrombophlebitis' has been defined as under:-

“Thrombophlebitis is a inflammatory-thrombotic disorder in which a thrombus develops in a vein located near the surface of the skin. Thrombophlebitis is inflation of a vein caused by a blood clot. It typically occurs in legs. A blood clot is a solid formation of blood cells that clump together. Blood clots can interfere with normal blood flow throughout the body, and are considered dangerous. Blood clots can cause swelling in the veins of affected region. A blood clot near the junction of one of the deep veins, may lead to a pulmonary embolism (PE), or a blood clot in the lung which can be life threatening.”

8. The primary purpose of fitness and body composition standards in the military has always been to select soldiers best suited to the physical demands of military service. Thus a person having a recurring physical ailment cannot sustain the

demanding requirements of initial military training and subsequent rigors of military life, hence he is not suited to serve in the Army. Considering that the applicant developed the disability within 02 months of joining training the Invaliding Medical Board has rightly reached a conclusion that the disease is neither attributable to nor aggravated by military service.

9. In view of the above and the fact that the disability from **'Thrombophlebitis (left) Leg (463)'** was detected within two months of joining training and continued to reoccur despite rest and treatment for over one year, we agree with the findings of Invalided Medical Board that the disability of the applicant was constitutional in nature. We also agree with the respondents that such a disability could not have been detected at the time of recruitment as during the enrolment only preliminary medical examinations are carried out.

10. The O.A. therefore lacks merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: July, 2018

GSR/-

(Justice S.V.S. Rathore)
Member (J)